

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of Application of Wapsipinicon Wind Project, LLC for a Certificate of Need for a Large Energy Facility. 105 MW Large Wind Energy Conversion System (LWECS) in Mower County, Minnesota

**SUMMARY OF
PUBLIC TESTIMONY**

A public hearing was held before Administrative Law Judge Manuel J. Cervantes on August 14, 2008, at 6:00 p.m. at the Elkton Community Center Building, 117 Main Street, Elkton, Minnesota 55926. The purpose of the hearing was to elicit public comment regarding the application of Wapsipinicon Wind Project, LLC, (Wapsipinicon) for a requisite Certificate of Need required to build the proposed large energy facility. The public hearing continued until all interested persons had an opportunity to be heard.

Eighteen members of the public attended the public hearing and nine signed the hearing roster. Two of those who registered on the hearing roster offered testimony during the hearing. After the hearing, the record remained open for four days to allow all interested persons to submit written comments. One member of the public filed a written comment. The record closed on August 18, 2008.

NOTICE

The Public Utility Commission (PUC) has the option of holding a hearing itself or request that an Administrative Law Judge conduct the hearing and compile a record for consideration by the PUC in making its final decision. Under Minn. Stat. § 216B.2421, the Wapsipinicon North Wind Project qualifies as a large energy facility. Under Minn. Stat. § 216B.243, subd. 4, the PUC is required to conduct a public hearing at a location and hour reasonably calculated to be convenient for the public. An objective of the public hearing shall be to obtain public opinion on the necessity of granting a Certificate of Need.

This report contains a summary of the public testimony. It is not a final decision. Pursuant to Minn. R. 7849.5720, subp. 3, the PUC shall not make a final decision on a permit for a project that requires a Certificate of Need from the PUC until the applicant has obtained the necessary approval from the PUC.

BACKGROUND ON THE APPLICATION

Wapsipinicon proposes to construct, own, and operate a large energy facility with a capacity of up to 105 MW. The proposed project consists for up to seventy 1.5 MW wind turbine generators. The towers will be 80 meters (262.5 feet) in height. The rotor diameter will be 77 meters (252.6 feet), resulting in a maximum overall height of 118.5 (388.8 feet) when one blade is in the vertical position.

The electrical collector system will consist of underground 34.5 kV collection lines and facilities providing step-up transformation. Wapsipinicon is also proposing to build a 161/34.5 kV project substation which will consist generally of 2 161/34.5 transformers, and associate switching and protection equipment as well as metering equipment, and a small control house.

Power from the turbines will be collected at this substation and transmitted to the Pleasant Valley Substation located in section 19 of Pleasant Valley Township via approximately 6 miles of overhead 161 kV transmission line.

Other project-associated facilities will include pad mounted step-up transformers and access roads.

The project will be located in central Mower County, near the town of Dexter, in portions of Grand Meadow, Pleasant Valley, Dexter, and Sargeant townships, and approximately 20 miles east of Austin, Minnesota. Wapsipinicon has designated approximately 40 square miles as the project area. The town of Dexter is adjacent to the project site to the southwest. Interstate 90 is the southern border of the project.

Several of issues were raised at the hearing by landowners in the proposed project areas, including the location of wind turbines and the directions they face; the ability of Community-Based Energy Development (C-BED) projects to connect to the transmission line proposed by Wapsipinicon; and safety concerns raised by the timing of Wapsipinicon's proposed construction schedule during the peak of the agricultural harvest period.

The Commission will make the final decision whether to issue the Certificate of Need following a review of this Summary of Public Testimony, as well as all of the hearing transcripts, written comments submitted by the public, filings and arguments submitted by Wapsipinicon and other persons and entities interested in this matter.

SUMMARY OF PUBLIC TESTIMONY

Eighteen members of the public were in attendance at the hearing and nine signed the hearing roster. Two of those who registered on the hearing roster offered testimony during the hearing. One member of the public timely submitted his comments in writing.

Administrative Law Judge Manuel J. Cervantes began the hearing by explaining that the purpose of the public hearing was to solicit public comments regarding the environmental report which was prepared and made available to the public on August 11, 2008 by the Office of Energy Security (OES). David Birkholz, Project Manager, Energy Facility Permitting Division of OES at the Minnesota Department of Commerce (DOC), briefly explained the process which was undertaken as a result of Wapsipinicon's application for a Certificate of Need. Mr. Birkholz submitted, and the Administrative Law Judge received, a copy of the Environmental Report¹ and copies of the requisite legal notices.² Ian Krygowski, Regional Project Development Manager, enXco Development Corporation, explained that Wapsipinicon requires a Certificate of Need because it has entered into a power purchase agreement with Southern Minnesota Municipal Power Agency (SMMPA) for the full output of a 105 MW wind project and briefly described the project. Bob Cupit, Manager of the Energy Facilities Permitting Division, OES, DOC briefly described the responsibility and the decision-making authority of the Public Utilities Commission (PUC). PUC's role is to determine whether a project is needed and whether it serves the best interest of the community. The presenters were available to answer questions after the Administrative Law Judge concluded the recorded comments of the public hearing.

Remarks by Mr. Ray Dietrich: Mr. Dietrich stated that he has three windmills on his farm and noted that the alignment of the windmills was offset by 120 feet. He indicated a preference of a straight alignment from east to west, without offset.

Remarks by Mr. James Hartson: Mr. Hartson noted that he had appeared and commented at the Public Information and Scoping Meeting held on July 22, 2008. He inquired whether those remarks and submissions were made part of the record in these proceedings.³ Mr. Hartson raised several issues. He stated that the Governor and other state officials, have indicated that Community-Based Energy Development (C-BED) projects are a priority in this state. Mr. Hartson questioned whether Wapsipinicon was the appropriate applicant in this proceeding. He stated that SMMPA should have been the applicant because it has the need for the energy, not the developer Wapsipinicon. He believes that Minnesota law requires energy purchasers to identify C-BED projects in the area that can be used to satisfy its state-mandated renewable energy targets. He said that SMMPA is required to seek out C-BED projects, that he has had a C-BED project in the area for nearly two years and SMMPA has made no attempt to negotiate for the purchase of this power. He stated that since he and his affiliated organization, Midwest Independent Service Organization (MISO) filed their application in May 2007, 1800 MW of additional projects have been entered into the queue for Mower County alone. He believes the large projects are attempting to gain a competitive edge over the C-BED projects by the sheer volume of projects filed.

Recently, Mr. Hartson asked representatives of Wapsipinicon if his project could tap into its transmission line and was told by a Wapsipinicon representative that he

¹ Ex. 9.

² Exs. 1-4 and 6-8.

³ Ex. 5 submitted at this hearing by Mr. Birkholz, contains copies of the material submitted by Mr. Hartson at the meeting of July 22 and is incorporated in this hearing by reference.

could not because it was only going to build transmission lines big enough for its project. He believes this is an unfair restraint of trade and unlawful. Finally, Mr. Hartson questioned whether the national policy of trying to become energy independent will be met by approving the Wapsipinicon project which is owned by a French company, enXco, because the profits of this enterprise may not remain in this country. Mr. Hartson recommends that the Certificate of Need be denied unless SMMPA and Wapsipinicon comply with the law.

SUMMARY OF WRITTEN COMMENTS

There was one written comment submitted on August 15, 2008 to the Administrative Law Judge prior to the close of the post-hearing comment period.

Comments of Eric Lee: in his cover e-mail correspondence⁴, Mr. Lee identified himself as a community banker, landowner, and resident of the community where the project will be located. He stated that in his capacity as a banker he is familiar with the contractual obligations of Wapsipinicon. While Mr. Lee cannot divulge specific information because of the confidential nature of the contracts, it is his opinion that Wapsipinicon has not acted in good faith relative to the financial compensation contained in the Wind Option Agreements entered into with landowners and does not believe that Wapsipinicon has abided by the landowner notice provisions of the contracts.

In his attached letter, dated August 15, 2008,⁵ Mr. Lee highlighted a portion of Minn. R. 7849.0120, and asks the PUC to consider:

The appropriateness of the ... type, and the timing of the proposed facility compared to those of reasonable alternatives; ... the effects of the proposed facility upon the ... socioeconomic environments compared to the effects of reasonable alternatives; and ... by a preponderance of the evidence on the record, the proposed facility, or a suitable modification of the facility, will provide benefits to society in a manner compatible with protecting ... socioeconomic environments....

Mr. Lee raised the concern that the parent company of Wapsipinicon, enXco, is an “out of area” wind company and believes the majority of the economic benefits will leave the community. Mr. Lee notes that enXco is one of many “out of area” wind companies who have “bombarded” the community with wind projects which leave little economic benefit to the community. He favors locally owned C-BED projects. Mr. Lee cites a 2004 U.S. Government Accountability Office (GAO) study.⁶ Based upon his analysis, considering Wapsipinicon’s nameplate capacity of 105 MW, Mr. Lee estimates

⁴ Ex. 11.

⁵ Ex. 12.

⁶ GAO-04-756 Report to the Ranking Democratic Member, Committee on Agriculture, Nutrition, and Forestry, U.S. Senate: *Renewable Energy-Wind Power’s Contribution to Electric Power Generation and Impact on Farms and Rural Communities*, September 2004.

that approximately \$7,000,000 will leave the community annually because of “out of area” development company ownership. Mr. Lee believes that there are wind developers in Minnesota who specialize in working with communities to establish C-BED wind projects and who can successfully compete with large corporate developments. Mr. Lee requests that the PUC carefully consider the best business models which will offer the greatest capital return to the community.

Lastly, Mr. Lee is also concerned about the timing of Wapsipinicon’s construction phase this fall which coincides with the farmers’ harvest period. Wapsipinicon proposes to build infrastructure roads and a transmission line in September 2008. Mr. Lee notes that this community’s number one industry is agricultural production, that farmers work long hours, and often times, in the dark. Mr. Lee fears that Wapsipinicon may create obstacles during its construction phase which could create safety hazards to farmers and their equipment as well as cause delays in the harvest.

Dated: August 20, 2008

s/Manuel J. Cervantes

MANUEL J. CERVANTES
Administrative Law Judge